



## **DEPARTMENT OF THE TREASURY**

### **Alcohol and Tobacco Tax and Trade Bureau**

#### **27 CFR Part 9**

**[Docket No. TTB–2020–0012; T.D. TTB–175; Ref: Notice No. 197]**

**RIN: 1513–AC64**

#### **Establishment of the Lower Long Tom Viticultural Area**

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Final rule; Treasury decision.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the approximately 25,000-acre “Lower Long Tom” viticultural area in portions of Lane and Benton Counties, Oregon. The viticultural area is located entirely within the existing Willamette Valley viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

**DATES:** This final rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background on Viticultural Areas**

###### *TTB Authority*

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations

for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated the functions and duties in the administration and enforcement of these provisions to the TTB Administrator through Treasury Order 120–01.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission to TTB of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

### *Definition*

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is

neither an approval nor an endorsement by TTB of the wine produced in that area.

### *Requirements*

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- If the proposed AVA is to be established within, or overlapping, an existing AVA, an explanation that both identifies the attributes of the proposed AVA that are consistent with the existing AVA and explains how the proposed AVA is sufficiently distinct from the existing AVA and therefore appropriate for separate recognition;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and

- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

### **Lower Long Tom Petition**

TTB received a petition from Dieter Boehm, owner of High Pass Vineyard and Winery, proposing the establishment of the “Lower Long Tom” AVA. The proposed AVA is located in portions of Lane and Benton Counties, Oregon, and lies entirely within the established Willamette Valley AVA (27 CFR 9.90) and does not overlap any other existing or proposed AVA. Within the approximately 25,000-acre proposed AVA, there are 22 commercial vineyards which cover a total of approximately 492 acres, as well as 10 wineries. The distinguishing features of the proposed Lower Long Tom AVA are its topography, soils, and climate.

The proposed Lower Long Tom AVA takes its name from the Long Tom River, which runs along the eastern boundary of the proposed AVA. The proposed AVA is located along the “lower,” or downstream, portion of the river, between Fern Ridge Lake and the Willamette River. The topography of the proposed AVA is characterized by chains of rolling hills separated by west-east trending valleys that were cut by the tributaries of the Long Tom River.

Elevations range from approximately 1,000 feet along ridgelines on the western edge of the proposed AVA boundary to approximately 550 feet before dropping to the Willamette Valley floor. The steepest slope angles are about 45 percent, with the average slope angle being about 20 percent. To the west of the proposed Lower Long Tom AVA are the high, rugged elevations of the Coast Range, which rise to over 3,000 feet. East of the proposed AVA are the lower, flatter elevations of the Willamette Valley floor. South of the proposed AVA are Fern Ridge Lake, the watershed of the upper Long Tom River, and a series of

hills with lower elevations than are found in the proposed AVA. To the north of the proposed AVA, the elevations descend to the floor of the Willamette Valley.

The most common soils in the proposed AVA are Bellpine and Bellpine/Jory complex. Bellpine soil is derived from decomposed sedimentary marine uplift over a sandstone or siltstone substrate. These soils are relatively shallow and well-drained. The Bellpine/Jory complex combines sedimentary and volcanic components and has a slightly greater depth and water-holding capacity than the Bellpine soils. Soils north of the proposed Lower Long Tom River AVA are primarily Jory soils. To the east of the proposed AVA, soils are described as deep alluvial river bottom soils. South of the proposed AVA, the soils are mostly Bellpine, as are found in the proposed AVA, but without the Bellpine/Jory complex. The predominate soils west of the proposed AVA are from the Witzel and Ritner series, which are both derived from decomposed igneous and contain varying amounts of rocks and cobbles.

Prairie Mountain, a tall mountain in the Coast Range due west of the proposed AVA, blocks cool Pacific air from entering the proposed Lower Long Tom AVA. Instead, the marine air flows into the regions to the north and south of the proposed AVA. As a result, growing season temperatures within the proposed AVA are generally warmer than in regions that are more exposed to the cool marine air. From 2012 to 2016, the average harvest date for Pinot Noir grapes within the proposed AVA ranged from September 17 to September 26. By contrast, the regions to the north and south of the proposed AVA, which are more exposed to cool marine air, generally have later harvest dates. From 2012 to 2016, the average harvest date for Pinot Noir grapes grown in the region north of the proposed AVA ranged from September 24 to October 2, while harvest dates to the south ranged from September 27 to September 28.

## **Notice of Proposed Rulemaking and Comments Received**

TTB published Notice No. 197 in the **Federal Register** on October 23, 2020 (85 FR 67475), proposing to establish the Lower Long Tom AVA. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed AVA. The notice also compared the distinguishing features of the proposed AVA to the surrounding areas. For a detailed description of the evidence relating to the name, boundary, and distinguishing features of the proposed AVA, and for a detailed comparison of the distinguishing features of the proposed AVA to the surrounding areas, see Notice No. 197.

In Notice No. 197, TTB solicited comments on the accuracy of the name, boundary, and other required information submitted in support of the petition. In addition, given the proposed AVA's location within the Willamette Valley AVA, TTB solicited comments on whether the evidence submitted in the petition regarding the distinguishing features of the proposed AVA sufficiently differentiates it from the established AVA. TTB also requested comments on whether the geographic features of the proposed AVA are so distinguishable from the established Willamette Valley AVA that the proposed AVA should no longer be part of the established AVA. The comment period closed December 22, 2020.

In response to Notice No. 197, TTB received one comment. The comment did not specifically support or oppose the proposed AVA. The comment stated that, although many agricultural lands provide necessary food crops for the community, wine grapes are not a necessity. The comment then expressed concern as to "who will bear the cost of preparing this land," and "how this project will be funded." Finally, the comment wondered if there were any

other uses for the land that would “better serve the community” than growing wine grapes, and how the establishment of the AVA may “impact businesses and projects outside of alcohol producers.”

In response, TTB notes that establishment of an AVA for use on a wine label is simply intended to provide consumers with more information about the wine they purchase, including where the grapes used to make the wine were grown. The establishment of an AVA recognizes the existing natural features of a particular region (such as the climate, soil, topography, or geology) and how they differ from the natural features of the surrounding areas, and that wine grapes grown in that region face a different set of growing conditions than grapes grown elsewhere.

Further, TTB’s establishment of an AVA only addresses the use of AVA names on labels, and does not convey any rules regarding land use within an AVA. Establishing an AVA does not require that the land in the AVA be used for any additional grape growing, require the land to be used only for grape growing, or require the land be prepared, modified, or used in any way. Also, TTB’s establishment of an AVA does not require or provide funding for any projects within an AVA.

### **TTB Determination**

After careful review of the petition and the comment received in response to Notice No. 197, TTB finds that the evidence provided by the petitioner supports the establishment of the Lower Long Tom AVA. Accordingly, TTB establishes the “Lower Long Tom” AVA in portions of Lane and Benton Counties, Oregon, effective 30 days from the publication date of this document.

TTB has also determined that the Lower Long Tom AVA will remain part of the established Willamette Valley AVA. As discussed in Notice No. 197, the

Lower Long Tom AVA shares some broad characteristics with the established AVA. For example, the Lower Long Tom AVA and the Willamette Valley AVA are generally under 1,000 feet. Additionally, both areas contain mostly silty and clay loam soils. However, the Lower Long Tom AVA does have some features that differentiate it from the Willamette Valley AVA. For instance, a chain of hills comprises most of the Lower Long Tom AVA, whereas a broad, treeless plain covers most of the Willamette Valley AVA. Additionally, because much of the cool marine air is diverted away from the AVA, growing season temperatures are generally warmer and harvest dates are generally earlier within the Lower Long Tom AVA than within other less-sheltered regions of the Willamette Valley.

### **Boundary Description**

See the narrative description of the boundary of the Lower Long Tom AVA in the regulatory text published at the end of this final rule.

### **Maps**

The petitioners provided the required maps, and they are listed below in the regulatory text. The Lower Long Tom AVA boundary may also be viewed on the AVA Map Explorer on the TTB website, at <https://www.ttb.gov/wine/ava-map-explorer>.

### **Impact on Current Wine Labels**

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in

compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

With the establishment of the Lower Long Tom AVA, its name, “Lower Long Tom,” will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the regulations clarifies this point. Consequently, wine bottlers using the name “Lower Long Tom” in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the AVA name as an appellation of origin.

The establishment of the Lower Long Tom AVA will not affect the existing Willamette Valley AVA, and any bottlers using “Willamette Valley” as an appellation of origin or in a brand name for wines made from grapes grown within the Willamette Valley will not be affected by the establishment of this new AVA. The establishment of the Lower Long Tom AVA will allow vintners to use “Lower Long Tom” and “Willamette Valley” as appellations of origin for wines made primarily from grapes grown within the Lower Long Tom AVA if the wines meet the eligibility requirements for the appellation.

### **Regulatory Flexibility Act**

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor’s efforts

and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

### **Executive Order 12866**

It has been determined that this final rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

### **Drafting Information**

Karen A. Thornton of the Regulations and Rulings Division drafted this final rule.

### **List of Subjects in 27 CFR Part 9**

Wine.

### **The Regulatory Amendment**

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

### **PART 9—AMERICAN VITICULTURAL AREAS**

1. The authority citation for part 9 continues to read as follows:

**Authority:** 27 U.S.C. 205.

### **Subpart C—Approved American Viticultural Areas**

2. Subpart C is amended by adding § 9.281 to read as follows:

#### **§ 9.281 Lower Long Tom.**

(a) *Name.* The name of the viticultural area described in this section is “Lower Long Tom”. For purposes of part 4 of this chapter, “Lower Long Tom” is a term of viticultural significance.

(b) *Approved maps.* The four United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Lower Long Tom viticultural area are titled:

- (1) Cheshire, Oregon, 1984;
- (2) Horton, Oregon, 1984;
- (3) Glenbrook, Oregon, 1984; and
- (4) Monroe, Oregon, 1991.

(c) *Boundary.* The Lower Long Tom viticultural area is located in Benton and Lane Counties, in Oregon. The boundary of the Lower Long Tom viticultural area is as described as follows:

(1) The beginning point is on the Cheshire map at the intersection of Franklin Road and the 360-foot elevation contour in Section 43, T16S/R5W. From the beginning point, proceed west on Franklin Road to its intersection with Territorial Road (known locally as Territorial Highway); then

(2) Proceed southwesterly along Territorial Highway to its intersection with an unnamed, unimproved road north of Butler Road in Section 44, T16S/R5W; then

(3) Proceed west in a straight line to the western boundary of Section 29, T16S/R5W; then

(4) Proceed north along the western boundary of Section 29 to the southern boundary of Section 57, T16S/R5W; then

(5) Proceed northwest in a straight line to the right angle in the western boundary of Section 57, T16S/R5W; then

(6) Proceed west in a straight line, crossing through Sections 58 and 38, to the intersection of Sections 23, 24, 25, and 26, T16S/R6W; then

(7) Proceed north along the western boundary of Section 24 to the first intersection with the 800-foot elevation contour; then

(8) Proceed northerly, then northwesterly along the 800-foot elevation contour, crossing onto the Horton map, to the intersection of the 800-foot

elevation contour and an unnamed, unimproved road with a marked 782-foot elevation point in Section 10, T16S/R6W; then

(9) Proceed west in a straight line to the 1,000-foot elevation contour; then

(10) Proceed northerly along the 1,000-foot elevation contour, crossing onto the Glenbrook map, to the elevation contour's third intersection with the Lane–Benton County line in Section 10, T15S/R6W; then

(11) Proceed east along the Lane–Benton County line, crossing onto the Monroe map, to the R6W/R5W range line; then

(12) Proceed north along the R6W/R5W range line to its intersection with Cherry Creek Road; then

(13) Proceed northeasterly along Cherry Creek Road to its intersection with Shafer Creek along the T14S/T15S township line; then

(14) Proceed northeasterly along Shafer Creek to its intersection with the 300-foot elevation contour; then

(15) Proceed easterly along the 300-foot elevation contour, crossing Territorial Highway, to the intersection of the elevation contour with the marked old railroad grade in Section 33/ T14S/R5W; then

(16) Proceed south along the old railroad grade to its intersection with the southern boundary of Section 9, T15S/R5W; then

(17) Proceed west along the southern boundary of Section 9 to its intersection with Territorial Highway; then

(18) Proceed south along Territorial Highway to its intersection with the 360-foot elevation contour in Section 16; T15S/R5W; then

(19) Proceed southwesterly along the 360-foot elevation contour, crossing Ferguson Creek, and continuing generally southeasterly along the elevation contour, crossing onto the Cheshire map and crossing over Owens Creek and

Jones Creek, to the point where the elevation contour crosses Bear Creek and turns north in Section 52; T16S/R5W; then

(20) Continue northeasterly along the 360-foot elevation contour to the point where it turns south in the town of Cheshire; then

(21) Continue south along the 360-foot elevation contour and return to the beginning point.

Signed: August 24, 2021.

**Mary G. Ryan,**

*Administrator.*

Approved: September 24, 2021.

**Timothy E. Skud,**

*Deputy Assistant Secretary  
(Tax, Trade, and Tariff Policy).*

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